SUPREME COURT, U.S.
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E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-934.

JOHN DUBELKO,

Petitioner,

vs.

JEAN DUBELKO,

Respondent.

MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF CERTIORARI AND APPEAL.

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Now comes the Respondent, Jean Dubelko and by and through her Attorneys respectfully moves this Court to dismiss the appeal as filed by the Petitioner herein for the reason that said appeal does not present a federal question and further on the ground that said appeal is not within the jurisdiction of this Court and for the further reasons set forth in the Brief hereto attached and made a part of this Motion.

STATEMENT OF FACTS AND BRIEF.

The Respondent in this case filed a divorce action against the Petitioner in the Court of Common Pleas of Cuyahoga County, State of Ohio, praying for a divorce, support of minor children, temporary and permanent alimony, custody of minor children and division of property.

To this action, the Petitioner filed an Answer. The case came up for hearing in the aforesaid Common Pleas Court and the Trial Court granted a divorce to this Re-

spondent, made a division of property and granted her custody of said children together with support orders.

The Petitioner, the Defendant in the lower Court, filed a Notice of Appeal to the Court of Appeals of Cuyahoga County, State of Ohio and set forth therein eleven (11) assignments of error and upon hearing of said appeal, the said Reviewing Court overruled all eleven (11) assignments of error. Thereafter, the same Petitioner, the Defendant in the lower Court, filed a Notice of Appeal to the Supreme Court of Ohio, which was also overruled by said Court. Now the same Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of the United States and which Petition is now before this Court.

We wish to call this Court's attention to the rules of the Supreme Court of the United States effective July 1, 1970, Rule 16-A and B thereof, part of which reads as follows:

> "16-A. The Court will receive a Motion to Dismiss any appeal on the ground that the appeal is not within the jurisdiction of this Court.
>
> 16-B. The Court will receive a Motion to Dismiss an appeal from a State Court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised or expressly passed on; or that judgment rests on an adequate non-federal basis."

The Respondent herein wishes to call this Court's attention to the fact that at no time did the Petitioner raise any federal question involving the Constitution in the lower Court and that said question is now raised in this Court for the first time.

Upon a careful perusal of the Brief as filed by the Petitioner this Honorable Court will note that the issues

raised in said Brief do not raise any Constitutional questions and that the said Petitioner by filing an appeal in all the State Courts did have due process of law and was never deprived of due process of law.

The Respondent herein does not wish to burden this Court with a long and tedious Brief in support of her Motion to Dismiss the appeal of the Petitioner herein, in that the facts are so elementary that this appeal should be dismissed as requested.

Respectfully submitted,

ROBERT I. SAMPLINER,
HYMAN J. BLUM,
Counsel for Respondent.